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**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

In re  
TEMBLOR PETROLEUM COMPANY, LLC  
Debtor.

Case No. 2020-11367  
Chapter 7  
Docket Control Number: PRG-3

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
GENAUTICA OIL HOLDINGS, LP'S  
AMENDED MOTION TO VACATE  
SALE ORDER, AS AMENDED**

Hearing  
Date: June 14, 2023  
Time: 1:30 p.m.  
Place: 2500 Tulare Street, Suite 2501  
Fresno, CA 93721

Judge: Hon. Jennifer Niemann

1                    **MEMORANDUM OF POINTS OF AUTHORITIES**

2                    Genautica Oil Holdings, LP (“Genautica”) moves the Court to vacate its *Order on Motion*  
3 *to Sell Estate’s Interest in Property Pursuant to 11 U.S.C Section 363(b) (Debtor’s Working*  
4 *Interest Hangman Hollow Field, Monterey County, CA)* entered August 19, 2022 [Dkt. No. 432]  
5 (the “Sale Order”) and *Amended Order on Motion to Sell Estate’s Interest in Property Pursuant*  
6 *to 11 U.S.C. Section 363(b) (Debtor’s Working Interest Hangman Hollow Field, Monterey County,*  
7 *CA)* [Dkt. 473] dated November 3, 2022 (the “Amended Order”) pursuant to Rule 9024 of the  
8 Federal Rules of the Bankruptcy Procedure, and section 105(a) of title 11 of the United States  
9 Code §§ 101-1532 (the “Bankruptcy Code”). In support of its Motion, Genautica respectfully  
10 represents as follows:

11                    **INTRODUCTION**

12                    Genautica moves the Court to vacate the Sale Order, as amended, and reopen the auction  
13 held on August 10, 2022 of the Debtor’s 24.22% interest (the “Property”) in an oil field known as  
14 Hangman’s Hollow (the “Project”) because the Brokers’ (defined below) mistakes and  
15 misstatements of fact impaired the sale process and tarnished its results.

16                    First, the Brokers told the bidders that the Project was ready to produce oil, which is a  
17 material representation that the bidders relied on in submitting their bids. However, that  
18 representation was incorrect. Rather than being ready to produce oil, the Project has been stalled  
19 since 2018, and is many years and dollars away from producing.

20                    Next, the only two bidders at auction were given different sale terms by the Trustee  
21 (defined below) and the Brokers. The procedures given to Genautica stated that the sale was “as  
22 is” and “subject to” the Debtor’s liabilities. The procedures given to Prudent Resources  
23 (“Prudent”), did not. As a result, the two bidders bid on different, conflicting, material sale terms.  
24 The difference is especially material because the Project operator, Trio Petroleum LLC (“Trio”)  
25 may assert substantial claims against the Property, which claims Genautica disputes.

26                    When the bidders learned that the Project was in fact not ready to produce, but rather was  
27 stalled at the permitting stage, and Prudent learned that the Property was being sold subject to

1 Trio's purported claims against the Property, the bidders withdrew their bids. But rather than  
2 reopen the auction, the Trustee, believing he had no other option, moved to amend the Sale Order  
3 and award the Property to Trio, who in addition to being the operator of the Property was the  
4 stalking horse bidder. Trio did not bid at the auction; Trio's stalking horse bid is the lowest bid for  
5 the Property; Trio failed to obtain the necessary permits to let the Project proceed; Trio failed to  
6 disclose that the Project was stalled; Trio is asserting claims against the Property that Genautica  
7 believes are unfounded; and Trio asked CalGEM (defined below) to prioritize Trio's other projects  
8 over this one. Furthermore, in 2021, Trio told Genautica that the Project could deliver oil  
9 "tomorrow," which, as Genautica only recently learned, was not correct.

10       Genautica respectfully submits that when the mistakes and irregularities were discovered,  
11 the Trustee should have reopened the auction to submit the Property to fair and equitable  
12 competitive bidding for the benefit of the estate. Even after it withdrew its bid, Genautica remained  
13 and remains willing to purchase the Property for no less than 50% more than the stalking horse  
14 bid. By moving to amend the Sale Order and asking the Court to award the Property to Trio, the  
15 Trustee actually sought approval of the sale to the **lowest** bidder, and was manifestly not in the  
16 best interest of the estate.

17       Accordingly, pursuant to Federal Rule of Bankruptcy Procedure 9024 and the Court's  
18 inherent authority to modify its orders under section 105(a) of title 11 of the United States Code,  
19 Genautica respectfully requests that the Court vacate the Sale Order, as amended, on the grounds  
20 of mistake and to avoid manifest injustice because (i) the bidders were induced to overbid based  
21 on the Brokers' misstatements of fact (in which Trio is, at the very minimum, complicit); (ii) the  
22 bidders were bidding based on different, material, sales terms (namely whether or not the Property  
23 is free and clear of Trio's purported hundreds of thousands of dollars of claims); and (iii) the record  
24 is clear that a renewed auction of the Property would yield at least 50% more than Trio's stalking  
25 horse bid. Genautica respectfully requests that the Court reopen the auction so that the bidders can  
26 submit their bids in a fair and equitable process, for the benefit of the Debtor's estate.  
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**FACTUAL BACKGROUND****General Background**

Debtor Temblor Petroleum Company, LLC’s (the “Debtor”) commenced this bankruptcy proceeding under chapter 11 of the Bankruptcy Code on April 4, 2020. On September 30, 2020, the Debtor employed Energy Advisors Group as brokers (the “Brokers”) to assist in the sale of the Debtor’s assets which included interests in several oil fields. On May 5, 2021, the case was converted to chapter 7 because the Debtor was unable to confirm a chapter 11 plan. Jeffrey M. Vetter was appointed chapter 7 trustee (the “Trustee”) and proceeded, with the Brokers, to market the Debtor’s assets for sale for the benefit of creditors.

**The Hangman Hollow Project**

The Debtor holds a 24.44% working interest in an oil field project referred to as Hangman Hollow. Trio is the operator of the Project and its largest working interest holder, holding 43%. See Declaration of Dan Scholefield (“Scholefield Decl.”) filed concurrently herewith, ¶3. The Debtor is the second largest working interest holder, and Genautica is a working interest holder having purchased its 12.22% interest from both Trio and the Debtor (collectively) in 2013. Id. Acquisition of the Property would give Trio majority control of the Project. Id. at ¶4. In 2021, Trio’s chairman told Genautica that the Project could start producing oil “tomorrow.” Id. at ¶3.

**The Sale Process**

Prior to the sale hearing and auction, the Brokers marketed the Property for sale. Scholefield Decl. at ¶9. In the weeks leading up to the auction, Genautica had telephone calls with Wesley Adams (“Adams”), the representative of the Brokers handling the sale, regarding the status of the Project and conditions of the sale. During those conversations, it was represented that the Project was ready to produce oil. The Brokers’ statements seemed to confirm what Trio told Genautica in 2021. Genautica was later told by Kris Pitta (“Pitta”) of Prudent Resources that he had had similar conversations prior to the auction. The representation that the Project is ready to produce oil is crucial to the value of the Property, and Prudent and Genautica relied on this representation in formulating their bids at the auction. However, this representation is incorrect. Scholefield Decl. at ¶9.

1       The Brokers posted promotional materials on their website. Scholefield Decl. at ¶10.  
2 Consistent with the Brokers' statements that the property was ready to produce, the marketing  
3 materials were posted on the Brokers' website under the category "Producing Properties."  
4 Scholefield Decl. at ¶11; Scholefield Decl. Exh. C (Energy Advisors Group Promotional Materials  
5 downloaded October 8, 2021, the "2021 Marketing Materials").

6       In describing the Project, the 2021 Marketing Materials state:

7       The Hangman Hollow field is currently idled pending final approval of steam injection.  
8 Temblor recently received aquifer exemption to enable steam flood injection. The estate  
highlights 4.0 million barrels of original oil in place and 2.0 mm barrels recoverable."

9       At the top of the first page, in a section entitled "Recent Updates (5/21/21)" the materials state  
10 "Hangman Hollow project just received steam injection permit." The marketing materials imply  
11 that the permit that awaited final approval was recently approved as of May 21, 2021. The  
12 information in the 2021 Marketing Materials further confirmed the Brokers' statement that the  
13 Project was ready to produce. Id. at ¶ 12; Scholefield Decl. Exh. C (2021 Marketing Materials).

14 **The Sale Motion**

15       On June 16, 2022, prompted by the Trustee's notice of intent to abandon the Debtor's  
16 interest in another oil field, Genautica wrote to the Trustee stating Genautica's interest in bidding  
17 on the Property. Scholefield Decl. at ¶5.

18       On July 13, 2022, the Trustee filed a motion (the "Sale Motion") [Dkt. 416] to sell the  
19 Debtor's 24.44% "Working Interest in Hangman Hollow Field, Monterey County, CA" (the  
20 "Working Interest") to Trio Petroleum LLC ("Trio") as stalking horse bidder for \$10,000, subject  
21 to higher and better offers.

22       On August 2, 2022, Genautica submitted its \$10,000 deposit to the Trustee. Scholefield  
23 Decl. at ¶6.

24       On August 10, 2022, the Court held an auction of the Property at which Trio was present,  
25 but did not bid. See Scholefield Decl. at ¶7; Scholefield Decl. Exh. A (Transcript of August 10,  
26 2022 hearing).

1       On August 19, 2022, the Court entered the Sale Order [Dkt. 432] authorizing the sale of  
2 the Property to Prudent (a third party) for \$101,000, over ten times Trio’s stalking horse bid, and  
3 if Prudent was unable to complete the sale authorized therein within 30 days from the entry of the  
4 Sale Order, the Trustee was authorized to sell the estate’s interest to Genautica for \$86,000, over  
5 eight times Trio’s stalking horse bid.

6 **Prudent and Genautica Learn that the Brokers Misstated  
7 that the Property was Ready to Produce Oil.**

8       Genautica and Prudent bid at the August 10<sup>th</sup> auction based on the representations of the  
9 Brokers that the Project was ready to produce oil, representations that we later learned were not  
10 correct. Scholefield Decl. at ¶8. After the Sale Order was entered, however, Genautica came to  
11 learn that the representation that Project was ready to produce oil was incorrect. Scholefield Decl.  
12 at ¶13. The Project is not producing or ready to produce oil; rather the Project is presently  
13 inoperable, the Project is likely one or more years away from being operable, and the Project will  
14 require significant further investment before becoming operable and before required approvals can  
15 be obtained. Id. In fact, Genautica has recently been advised by California Geologic Energy  
16 Management (“CalGEM”) which is one of several regulatory bodies governing oil and gas in  
17 California, that comprehensive updates and reviews are required to reestablish Underground  
18 Injection Control (“UIC”) related permits and proceed with several essential components of the  
19 Project including steam injection, oil and gas well production and storage, and proposed water  
20 disposal. Id. Furthermore, Genautica was informed that Trio instructed CalGEM to put the Project  
21 on the backburner and reassign its project review engineer to Trio’s unrelated South Salinas  
22 prospect. Scholefield Decl. at ¶30.

23       Additionally, the materials prepared by the Brokers were inaccurate and misleading.  
24 Scholefield Decl. at ¶14. First, the representation that the Project was idled “pending final  
25 approval of the steam injection permit” is inaccurate. Id. The Project was idled because of an  
26 expensive, time-consuming permit updating and approval process involving the critical new water  
27 disposal well “WD-2” application. Scholefield Decl. at ¶14.

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1       Next, while it is true in that in 2019 Trio obtained a steam injection permit, as indicated in  
2 an email dated September 13, 2022 from Pitta to the Trustee, in 2021, CalGEM provided written  
3 notice to Trio that the Project would need to undergo Project Approval Letter (“PAL”) review.  
4 Scholefield Decl. at ¶15. Thus, the injection permit was no longer current. In other words, the  
5 representation in the marketing materials that the Project was idled pending *final* review of the  
6 injection permit was incorrect, the steam injection and/or water disposal permit needed to be  
7 brought current. Id.; Scholefield Decl. Exh. D (September 13, 2022 Email from Kris Pitta to the  
8 Trustee (“September 13 Email”)).

9       Further, while the 2019 letter from CalGEM issuing the permit *was* provided to Prudent,  
10 the 2021 letter saying the Project would need to undergo PAL review *was not* provided to them  
11 until after the auction. Scholefield Decl. at ¶16; Scholefield Decl. Exh. D.

12       Finally, the representations in the marketing materials regarding the Debtor having  
13 received necessary aquifer exempt UIC permits are also incorrect. Scholefield Decl. at ¶17.  
14 Genautica only recently learned that the Project has been “on hold” by CalGEM since 2018  
15 because the existing water disposal well is insufficient for the Project as planned. Id. In order to  
16 secure approvals and permits required to proceed, an updated project approval application must be  
17 submitted for approval and permitting to various governmental oversight agencies, none of which  
18 has happened nor is it certain to happen. Id.

19       Notably, in September 2022, after the auction, the marketing materials were updated to  
20 delete references to these permits and exemptions. Scholefield Decl. at ¶18. The reference to the  
21 Project being idled “pending final approval of steam injection” was deleted; and the reference to  
22 “Tremblor recently received aquifer exemption to enable steam flood injection” was also deleted.  
23 Compare Scholefield Decl. Exhs. C and F (2022 Marketing Materials).

24       The 2021 Marketing Materials contain information, including graphs and charts, that is not  
25 readily accessible to any entity other than Trio, as Operator of the Project. Scholefield Decl. ¶28.  
26 The information in the marketing materials must have come from Trio as operator of the Project.  
27 Id. Such information is unlikely to have come from any other source. Id.

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1       Trio never informed Genautica, nor was Genautica informed by the Brokers or Trustee,  
2 that CalGEM put the water disposal well application on hold together with the entire PAL, or of  
3 any of the other challenges facing the Project, all of which was never disclosed by Trio.  
4 Scholefield Decl. at ¶29.

5 **The Bidders Submit Bids Based on Conflicting Terms of Sale**

6       During and after the auction, it became apparent that the Brokers were mistaken and  
7 confused about whether and to what extent Trio would assert claims against the Property.  
8 Scholefield Decl. at ¶19. As a result, the Trustee and Brokers provided the bidders with materially  
9 different terms of the sale, and the bidders bid at auction based on different terms. Id. If for no  
10 other reason, the sale should be set aside due to the fact that the only two bidders competing in the  
11 auction were given different sets of bid instructions by the Brokers and Trustee; an auction was  
12 conducted in which bidders unknowingly were not bidding on the same terms, conditions, and/or  
13 assets. Id.

14       The Sale Motion states that the sale is to be “as is” and “subject to” charges attributed to  
15 the Debtor’s share of the joint interest liabilities. Sale Motion ¶¶4(d), 6(i). The *Notice of Hearing*  
16 *on Motion to Sell Estate’s Interest in Property Pursuant to 11 U.S.C. Section 363(b) (Debtor’s*  
17 *Working Interest in Hangman Hallow Field Monterey County, CA)* (the “Sale Hearing Notice”)  
18 [Dkt. 417], did not attach the Sale Motion, but described the terms of the sale. The Sale Hearing  
19 Notice included the procedures set forth in subparagraphs 6(a) through 6(h) of the Sale Motion but  
20 omitted subparagraph 6(i) stating that the sale was “as is”. The Sale Hearing Notice contained no  
21 indication otherwise that the property was being sold “as is” and omitted any reference to the sale  
22 being “subject to” any interest or liabilities.

23       Thus, Adams represented to Genautica numerous times before and after the auction that  
24 Trio’s claims would be extinguished or otherwise cut off against the buyer by the sale in the  
25 bankruptcy case. Scholefield Decl. at ¶20. Later, Genautica learned that the Adams had made the  
26 same representations to Prudent and that as a result, at the auction Prudent was bidding for the  
27 Property believing the Property would be transferred free and clear of Trio’s purported interests.  
28 Id.

1       On August 17, 2022, after the auction, Genautica received a phone call from Adams in  
2 which Adams said that Prudent was upset that it was being asked to pay the Debtor's prior  
3 outstanding liabilities. Scholefield Decl. at ¶21. During the call, Scholefield stated that the  
4 bankruptcy papers said that the liabilities were included in the terms of sale, but the Broker  
5 disagreed. Id. Accordingly, Scholefield sent Adams the Sale Motion, *the Declaration of Jeffrey*  
6 *M. Vetter in Support of Motion to Sell Estate's Interest in Property Pursuant to 11 U.S.C. Section*  
7 *363(b) (Debtor's Working Interest Hangman Hollow Field, Monterey County, CA)* (the  
8 "Declaration") and the *Exhibit to Motion to Sell Estate's Interest in Property Pursuant to 11 U.S.C.*  
9 *Section 363(b) (Debtor's Working Interest Hangman Hollow Field, Monterey, [sic] County, CA)*  
10 (the "Exhibit") [Dkts, 416, 418, and 419] which had been sent to him (Scholefield) by the Trustee.  
11 Scholefield Decl. at ¶21; Scholefield Decl. Exh. G (August 17, 2022 Email exchange between  
12 Scholefield and Adams without attachments). In response, Adams sent Scholefield the Notice of  
13 Hearing, Dkt. 417, which had been sent to him by the Trustee, and he stated that he had not seen  
14 the other documents. Id.

15       Adams told Scholefield that he relied on the Notice of Hearing which omitted any reference  
16 to the sale being subject to any other claims or interests, and that as a result, he believed that the  
17 sale would extinguish Trio's claim against the Debtor's working interest which would stay with  
18 the estate. Scholefield Decl. at ¶22. Adams provided the Notice of Hearing to Prudent, namely  
19 Dkt. 417. Id.

20 **Prudent Bids Up The Property And Then Withdraws From The Bidding**

21       Relying on the misstatements to Prudent both as to the condition of the property and as to  
22 Prudent's potential for liability to Trio, Prudent bid up the Property to \$101,000, 10 times Trio's  
23 stalking horse bid. Scholefield Decl. at ¶23.<sup>1</sup> After the auction, Prudent learned that not only was  
24 the information about the permitting and status of the Project incorrect, but also that Trio would  
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26 \_\_\_\_\_  
27 <sup>1</sup> Notably, Trio's stalking horse bid was supported by only a \$2,000 deposit, while the other  
28 bidders were required to post a deposit of \$10,000. According to Trio's letter dated June 15,  
2022, after a multi – year marketing process, Trio purportedly made its offer to purchase the  
Debtor's interest in the Project just one day before Genautica made its offer to purchase the  
interest to the Trustee. [Compare Exhibit, Dkt. 419 with Exh. G, pgs. 4-5].

1 claim that Prudent would potentially be charged with the Debtor's pre-petition liabilities, despite  
2 the representations the bidders received to the contrary. Scholefield Decl. at ¶24. Ultimately,  
3 Prudent pulled out of the sale. Scholefield Decl. at ¶21, 24, and Scholefield Decl. Exh. D  
4 (September 13 Email). Had Prudent known of the true facts, it likely would not have participated  
5 in the auction. Id.

6 **Genautica Withdraws Its Auction Bid But States That It Is Willing To Continue With Its  
7 Purchase.**

8 Had Prudent not participated in the auction, Genautica's opening bid at \$15,000 would  
9 have been the highest bid. Scholefield Decl. at ¶24. Genautica is still interested in acquiring the  
10 Property, even though the true facts revealed that the Property was worth substantially less than  
11 previously thought. Id. at ¶25. Genautica offered to revise its bid to its opening bid amount  
12 (\$15,000) and immediately close the transaction. Genautica remains willing to purchase the  
13 Property for \$15,000 or to participate in a new auction for the purchase of the Property. Id.

14 **The Trustee Moves Ex Parte to Amend the Sale Order to Authorize Sale to Trio, the Lowest  
15 Bidder**

16 Without addressing the issues raised regarding the conditions of the sale, on November 3,  
17 2022, at 1:53 p.m., the Trustee filed the *Motion to Amend Order on Motion to Sell Estate's Interest*  
18 *in Property Pursuant to 11 U.S.C. Section 363(b)* [Dkt. 470] (the "Motion to Amend"). Contrary  
19 to rule 9014-1 of the Local Bankruptcy Rules of the Eastern District of California, the Motion to  
20 Amend was not set for hearing, there was no notice provided and no opportunity to object. There  
21 was no exigency, no motion for shortened notice, no procedural safeguards. The Court was not  
22 advised of the allegations of misstatements of fact by the Brokers, and that the Trustee received an  
23 offer to purchase the Property for \$15,000 from Genautica, 50% more than Trio's stalking horse  
24 bid. At 2:28 p.m. the same day, the Court entered an order granting the Motion to Amend [Dkt.  
25 473] (the "Amended Order"). At 3:54 p.m. the Motion to Amend was served on Genautica.  
26 Scholefield Decl. ¶26.

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1     **Genautica Vehemently Objects to the Ex Parte Motion, Appeals from the Ex Parte Order,**  
2     **and Engages the Trustee in Negotiations**

3                 The following day, November 4, Genautica wrote to the Trustee objecting to the relief  
4     sought in the Motion to Amend and reiterating its willingness to purchase the Property for \$15,000.  
5     Scholefield Decl. at ¶26. Nevertheless, on November 14, 2022 prior to the expiration of the 14-  
6     day stay period under Rule 6004(h), the Trustee filed its *Amended Return on Sale* [Dkt. 478]  
7     reporting that the Property had been sold to Trio for \$10,000, notice having been mailed to  
8     creditors and no objections having been received. However, as the Trustee advised the Court at  
9     the December 14, 2022 hearing, and has since confirmed to Genautica, the sale to Trio has not  
10    been consummated. On November 17, 2022, Genautica filed a Notice of Appeal of the Amended  
11    Order [Dkt. 481]. The schedule for briefing of the appeal was extended by the district court to  
12    allow for resolution of this Motion. [See District Ct. Case No. 22-1507, Dkt. 4, 5 and 7].

13                 At the December 14 hearing on the Trustee's motion to abandon a different property, the  
14     Trustee indicated that he would consider filing a motion for relief from the Sale Order and putting  
15     the Debtor's interest in the Project back up for bid. Approximately two weeks ago, the Trustee  
16     advised Genautica that he had decided not to file a motion for relief from the Sale Order. However,  
17     the Trustee also made clear that he had no objection to Genautica filing such a motion and did not  
18     intend to take a position on the motion, subject to the need to correct the record in any respect.<sup>2</sup>

19     **Trio's Role**

20                 As a result of the entry of the Amended Order, the Trustee proposes to sell the Debtor's  
21     interest in the Project to Trio. As the Operator of the Project, only Trio knew the true status of the  
22     Project, and the problems with the Project. Yet, Trio apparently failed to disclose these conditions  
23     to the Trustee. Indeed, Trio never informed Genautica, who, like the Debtor is a holder of a  
24     working-interest in the Project, and who has already significantly invested in this Project, that  
25     CalGEM put the water disposal well application on hold together with the entire PAL, or of any  
26     of the other challenges facing the Project, all of which was concealed by Trio. Scholefield Decl.  
27     at ¶29.

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28     <sup>2</sup> The Trustee also agreed to hold off consummating the sale while this motion is being resolved.

In effect, Trio's silence regarding the representations in the marketing materials, caused the parties to bid up the auction price which Trio thought would result in payment of its claims. When the bidders discovered the true facts and failed to close on the purchase, Trio was awarded the Property, giving itself a majority interest in the Project. This marred the sale process and left the estate with less than it could get in a full and fair process. This result is contrary to the letter and spirit of the Bankruptcy Code and applicable federal and local rules of procedure and should not be countenanced.

## JURISDICTION

9 This court has jurisdiction over this motion pursuant to 28 USC §§ 1334 and 157 and  
10 Federal Rule of Bankruptcy Procedure 8008.

## **ARGUMENT**

12 The Sale Order and Amended Order should be vacated pursuant to Federal Rule of Civil  
13 Procedure 60, made applicable in bankruptcy by Rule 9024. Rule 60(b) permits a bankruptcy court  
14 to grant relief from a final judgment, order, or proceeding on six separate grounds, including, in  
15 pertinent part, “(1) mistake, inadvertence, surprise, or excusable neglect”; and “(6) any other  
16 reason that justifies relief.” A Civil Rule 60(b) motion must be made “within a reasonable time.”  
17 Fed. R. Civ. P. 60(c). Civil Rule 60(b)(6) is to be liberally applied to accomplish justice. *Zurich*  
18 *Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.),* 503 F.3d 933, 941 (9th Cir. 2007).

19 This motion was brought within a reasonable time because the sale to Trio has not closed,  
20 and the Trustee has confirmed that he will not close the sale pending outcome of this motion, and  
21 the parties investigated the facts and attempted informal resolution before turning to the Court.

Granting the requested relief is amply justified on the basis of mistake.

An auction in which the bidders bid based on material misstatements of fact, and on the basis of conflicting terms and conditions of sale, is the tarnished opposite of the orderly sales process envisioned by section 363 of the Bankruptcy Code. It is axiomatic that representations, if made, must be true, and that bidders must bid on the same property and on same terms and conditions. The auction process here did not meet those standards, and Genautica respectfully submits that correcting of this kind of situation is precisely what Rule 60 is intended to accomplish.

1       On the other hand, leaving the Sale Order, as amended, in place is manifestly unjust. The  
2 Sale Order, as amended, rewards Trio for submitting the lowest bid, not participating at the auction,  
3 not disclosing the true facts about the Project's permitting, or lack thereof. *See Redus Fla.*  
4 *Commercial, LLC v. Coll. Station Retail Ctr., LLC*, 777 F.3d 1187, 1194 n.14 (11th Cir. 2014)  
5 ("Although 'equity will not set aside a sale for mere inadequacy of price, it will do so if the  
6 inadequacy is so great as to shock the conscience or if there are additional circumstances against  
7 its fairness. . .'"') (*quoting Gelfert v. Nat'l City Bank of N.Y.*, 313 U.S. 221 (1941)).

8       The injustice was compounded by the manner in which the Motion to Amend was filed, in  
9 violation of the local rules of this court, without an opportunity to be heard, and in the absence of  
10 any attenuating circumstances justifying the haste. *See In re Fisker Auto Holdings, Inc.*, 510 B.R.  
11 55, 60 (Bankr. D. 2014)( secured lender precluded from credit bidding for cause under section  
12 363(k), because, among other things the sale was being conducted with haste that was not justified  
13 under the circumstances and that did not allow time to discover the true facts).

14       Finally, the injustice is even further magnified because the result is detrimental to the  
15 estate. Genautica's offer for the Property is, and always has been, at a minimum, 50% higher than  
16 Trio's.

17       Accordingly, the Court should vacate the Sale Order and the Amended Sale Order, and  
18 reopen the bidding in the interests of justice and for the benefit of the estate.

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1                           **CONCLUSION**

2                           For the foregoing reasons, Genautica respectfully requests that the Court vacate the Sale  
3 Order and the Amended Sale Order, reopen the auction of the Property, and grant such other and  
4 further relief as the Court deems just and proper.

5  
6                           DATED: May 16, 2023

STRADLING YOCCA CARLSON & RAUTH, P.C.

7  
8                           By: /s/ Paul R. Glassman  
9                           Paul R. Glassman  
10                          Tatiana Ingman  
11                          Attorneys for Genautica Oil Holdings, LP

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